

DOCKET FILE COPY ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

In the Matter of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

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FEDERAL COMMUNICATIONS COMMISSION

To: The Commission

**JOINT REPLY COMMENTS OF THE NAMED
STATE BROADCASTER ASSOCIATIONS**

The Alabama Broadcasters Association, the Connecticut Broadcasters Association, the Georgia Association of Broadcasters, the Kansas Association of Broadcasters, the Maine Association of Broadcasters, the Michigan Association of Broadcasters, the Minnesota Broadcasters Association, the Missouri Association of Broadcasters, the Nebraska Broadcasters Association, the New Hampshire Association of Broadcasters, the New York State Broadcasters Association, the North Dakota Broadcasters Association, the Oklahoma Association of Broadcasters, the Tennessee Association of Broadcasters, the Texas Association of Broadcasters, the Utah Broadcasters Association, the Washington State Association of Broadcasters, the West Virginia Broadcasters Association and the Wisconsin Broadcasters Association (collectively, the "Associations"), by their attorneys and pursuant to Section 1.415 of the Commission's Rules,

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hereby jointly reply to certain of the Comments filed in response to the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

I. INTRODUCTION

1. The Associations represent member organizations that are regulated by the Commission, thereby giving the Associations a direct interest in this matter. The Associations are chartered to help preserve a regulatory and economic environment that is optimally conducive to the growth of the free, over-the-air, local broadcast industry. Thus, they appreciate the opportunity to provide their views in reply on the issue of whether the Commission should make changes to its rules implementing the Children's Television Act of 1990 ("CTA"). The Associations are committed to assisting broadcasters in fully complying with CTA and the rules and regulations of the FCC promulgated thereunder. The commitment of their Association members to CTA is genuine, effective and enduring.

II. BACKGROUND AND SUMMARY

2. In CTA, Congress directed the Commission to review, in any application for license renewal, whether a television station had "served the educational and information needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."^{2/} The Commission adopted rules implementing the CTA in 1991.^{3/} In the NPRM, the Commission proposes changes to its 1991 rules.

^{1/} Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, Notice of Proposed Rulemaking, ("NPRM"), MM Docket No. 93-48, FCC 95-143 (April 7, 1995).

^{2/} 47 U.S.C. § 303b(a)(2).

^{3/} Policies and Rules Concerning Children's Television Programming and Revision of
(continued...)

3. Contrary to the suggestions of the Center for Media Education, et al.^{4/} and others holding similar pro-regulatory views, the best way to implement CTA is not to impose new bureaucratic, content based mandates, but rather to allow more time for CTA and the free marketplace to continue to foster improvement in the availability and airing of quality educational and informational programs for children, and for the FCC to monitor progress during the process. Creative, responsive programming efforts undertaken by broadcasters are being effective in producing quality children's programs that are broadcast and actually watched by children, just as Congress intended. New bureaucratic definitions, or mandates such as a programming standard or a quantitative processing guideline, pose serious First Amendment concerns and, in any event, will not and cannot work efficiently to accomplish the laudable goal of increasing the amount of educational and informational broadcast television programming for children that children will actually watch.

III. COMMENTS ON SPECIFIC PROPOSALS IN THE NPRM

A. Quantitative Minimums

4. As the surveys of the National Association of Broadcasters ("NAB"),^{5/} the Association of Independent Television Stations, Inc. ("INTV")^{6/}, the Fox Broadcasting Company

^{3/} (...continued)

Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order, MM Docket Nos. 90-570 and 83-670, 6 FCC Rcd 2111, recons. and clarification granted in part, 6 FCC Rcd 5093 (1991), further recons. denied, 7 FCC Rcd 3197 (1992).

^{4/} Comments (October 16, 1995), passim.

^{5/} NAB Comments (October 16, 1995) at Attachment 1.

^{6/} INTV Comments (October 16, 1995) at Attachment 2.

("FBC") and the Fox Children's Network ("FCN")^{2/} and others demonstrate on the record in this proceeding, since 1990 there has been a substantial increase -- of more than 100% between 1990 and 1994 according to the NAB -- in the amount of children's educational and informational programming aired on the average television station. Since the passage of CTA, the free video marketplace has been producing new, increasing quantities of quality children's programs. To cite only one prominent example, a joint effort by the Wisconsin Broadcasting Association and public broadcasting stations in that state has produced a series of award-winning thirty half-hour magazine format programs known as "Get Real," which are broadcast on both commercial and public television stations throughout Wisconsin. As many critics have recognized, the programs -- in whose production kids are actually involved -- are both educational and fun to watch. In most Wisconsin markets, every network affiliate (ABC, NBC, CBS, Fox, PBS) is carrying "Get Real." Current plans are to produce an additional thirteen programs, but this time for broadcast in the entire Midwest region of Wisconsin, Iowa, Minnesota and Michigan.

5. There has been no market failure, but the market must be given more time to produce these types of programs. For example, the President of the Wisconsin Broadcasters Association is even now being invited to explain the effort to produce "Get Real" to broadcaster associations in other states. Interest continues to grow. The free marketplace will produce more such programs -- programs that are actually watched with interest by children -- if given time to work.

^{2/} FBC and FCN Letter (October 26, 1995) at 3.

B. Constitutional Concerns

6. In response to the queries in NPRM ¶ 72, the Associations believe that the kinds of quantitative standards and processing guidelines that the Commission has tentatively concluded are warranted in the NPRM are far more intrusive than current guidelines. The proposed definitions and guidelines unnecessarily intrude upon the discretion of broadcasters to broadcast programming that serve the needs and interests of their viewers. Indeed, any attempt to have the Government decide what is acceptable “core” programming limits station discretion in a manner that raises grave First Amendment issues. FCC v. League of Women Voters of California, 468 U.S. 364 (1984). The NAB has set forth a very persuasive showing why the First Amendment bars the FCC from promulgating regulations that would require television broadcasters to carry a certain quantitative minimum number of hours of children’s programming per week.^{8/} In passing CTA, the Congress was sensitive to that same concern and expressly disclaimed any intention to establish such minimums.^{9/} Indeed, when the FCC considered in 1991 whether to adopt quantitative processing guidelines, it agreed that Congress intended not to establish minimum criteria.^{10/} Given the original intent of the Congress, the serious constitutional concerns and the substantial marketplace progress already achieved, it is clear that the FCC has not shown any overriding, compelling reason to alter the carefully balanced course the Congress set, in its wisdom, when it enacted CTA.

^{8/} NAB Comments at 25-33; Attachment 6.

^{9/} Report & Order in MM Docket 90-570, 6 FCC Rcd. 2111, 2115 (1991).

^{10/} Memorandum Opinion & Order in MM Docket 90-570, 6 FCC Rcd 5093, 5100 (1991).

C. Improving the Flow of Information to the Public

7. The Associations applaud the Commission's principle that judgments of quality are best made by the audience -- children with their parents' guidance -- not the Government. (NPRM ¶ 4). Moreover, the Commission is correct that there must be a flow of information to the public so that parents will be aware of the quality programming that is available to their children. (NPRM ¶ 21 ff.). However, there is no need for bureaucratic mandates or additional paper work requirements on broadcasters to ensure these goals. Rather, the free market and open press will continue to ensure such an adequate flow of information without the need for Government interference. Again to cite only one example, in the case of "Get Real," many articles lauding the programs have appeared in both the general press and trade journals for teachers. The workings of the free marketplace and free press -- encouraged, of course, by press releases, previews for teachers and other promotions that need no new bureaucratic rules to work -- are far more effective than any new administrative rules about identifications in program guides (NPRM ¶ 24) or requirements for formulaic descriptions of programs in public files. (NPRM ¶ 26). The confluence of the statutory obligations imposed by CTA and the obvious strong desire on the part of television stations that children watch their children's programming provides reasonably adequate assurances that, without more, stations will continue to effectively promote their programs both over their stations and in local publications.

D. Definition of Programming for Children

8. In general, the Associations support the proposition that rules should be as clear, simple and fair as possible (NPRM ¶ 6). However, there is no need to change the current

definition of educational and informational programming in order to achieve clarity.^{11/} The Associations agree with the Comments of NAB in this proceeding that the current definition strikes the appropriate balance between allowing broadcasters to make their own programming decisions on the one hand -- a deference mandated by the Congress -- and providing guidance to the industry on the other. If there is a problem in this area, the Associations agree with the NAB that the FCC may wish to suggest "a specific reporting form."^{12/}

9. The Associations strongly disagree with the Commission's tentative conclusion that there is a need for a definition of "core" programs and with the proposed suggestions in ¶ 36 of the NPRM for a proposed definition of "core" children's programming. The Commission's focus should be on all efforts by stations -- broadcast and non-broadcast -- to serve children's needs.^{13/} Any attempt to define "core" programming will change this focus to one particular kind of children's programs and will therefore be counter-productive and contrary to Congressional intent in CTA.^{14/}

10. The Associations believe that any requirement for core programs that has education as a "significant purpose" (NPRM ¶ 37) will be unenforceably vague and, more

^{11/} The current rules defines educational and informational programming as "programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs." 47 C.F.R. § 73.671 Note (1994).

^{12/} NAB Comments at 19.

^{13/} See 47 C.F.R. § 73.671 Note (current rule taking this approach) (1994).

^{14/} The CTA authorizes the Commission "to consider any special non-broadcast efforts by the licensee that enhance the educational and informational value of programming to children." 47 U.S.C. § 303b(b)(1).

important, will be counter-productive. Such a definition relies on a false dichotomy between education and entertainment.

11. The Associations strenuously disagree with the Commission's tentative conclusion that stations should create "writings" in their public files describing the "educational objectives" of children's programs. (NPRM ¶ 38). This requirement will serve only to impose unnecessary paper work on stations that are already overburdened. If publicity is the objective, that goal will be met by the free press and by the free market efforts of stations to promote their programming schedules.

12. The Associations do not believe that the Commission should limit the time periods for which credit will be given for children's programming. (NPRM ¶ 40). Stations, not the Government, know best how to insure that young viewers will be attracted to actually watch the stations' educational and informational programming. Similarly, stations, not the government, know when best to show programs so as to serve the interests of children in their own markets. The Government should not substitute its judgment for the workings of the marketplace and stations' judgments about the needs in their own communities.

13. The Associations also oppose any restriction of credit for children's programs to "regularly scheduled" programming. As the Commission itself points out, this will create a disincentive to create and air children's specials, which may be most valuable. (NPRM ¶ 41). Moreover, contrary to the Commission's inclination, expressed in ¶ 42 of the NPRM, there should be no restriction on the length of programs that are credited -- the Associations believe that short segments, e.g., PSAs, are also very valuable and should count as evidence of a station's overall efforts to serve the educational and informational needs of children.

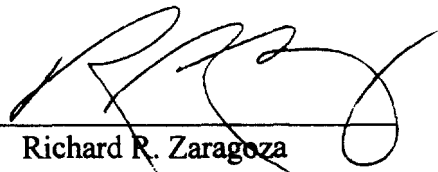
IV. CONCLUSION

Based on the foregoing, the Associations respectfully urge the Commission to adopt the positions set forth herein, as well as in the NAB's Comments, and to promptly terminate this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan R. Fisenne, do hereby certify that I have this 20th day of November, 1995, mailed by first-class United States mail, postage prepaid, copies of the foregoing "**Joint Reply Comments of the Named State Broadcaster Associations**" to the following:

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